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**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/398,156 09/16/99 MONTGOMERY

R 1910/174

002101 HM22/0615
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EXAMINER

LEVY, N

ART UNIT

PAPER NUMBER

1617

DATE MAILED:

06/15/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/1398158

Applicant(s)

MONTGOMERY

Examiner

MONTGOMERY

Group Art Unit

1617

5

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 10/15/99
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-13 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-13 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 1617

Receipt is acknowledged of Declaration (10/22/99) and CFR (10115799).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7,9-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are ambiguous, as it requires 2 components- a carrier, and separately, a therapeutic composition, and it is unclear if the 2 are administered one after the other, or simultaneously. It is unclear as to what "activity" is effectively achieved. Claim 9 has no antecedent for "the" cationic- or for "the therapeutic-" or "proteinaceous".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1-3,6,8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by IAMS biscuits or Nutro Tartar control.

Art Unit: 1617

IAMS: The carrier (ingredients-wheat, chicken, poultry digest) is proteinaceous. Thus, as the instant invention, negatively charged and contains salts of HCL (KCL) and antimicrobials (KCL, kinzoxide, Rotassium sorbate, Copper oxide, Potassium Iodide/all of which would be at the surface, among other places, and saliva soluble. This is fed to the dogs, which voluntarily eats (rewarding) and cleans teeth, keeps gum healthy and fresher breadth-all of which are of reversal of symptoms of bacterial presence.

Nutro has the same ingredients, and specific tartar control (scrubs away plaque, removes tartar; preserved).

Claims 1-4,6-11,13 are rejected under 35 U.S.C. 102(b) as being anticipated by Boyer 5100651.

Proteinaceous carrieic rawhide, tendon (col 1, lines 50-59) are coated with antimicrobial of the instant invention) (Bromchlorophene) (col 2, lines 33-41). The instant method is shown the chew is acceptable to the dog (col 1, lines 17-21).

Claims 1-6,8-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Masterman et al 5616315.

In general, methods for inhibiting bacteria in animal (patients). Mouth are disclosed (col. 1, lines 33-43) which consists of administering a carrier the exterior of which is subject to saliva solvation, and is voluntarily chewed (col 1, lines 49-63), to release the instant antimicrobial (col 2, lines 9-20) chlorhexidine. The carrier is protein thus, negatively charged

Art Unit: 1617

(col 3, lines 30-32). The instant preferred chlorhexidene (cationic) gluconate (counterion) is preferred by Masterman, also (col 4, lines 17-31).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Superbone or Rawhide Express in view of Brilliant-3591675 and Miskewitz or Masterman and further in view of Boyer.

The instant Rawhide Chew, with actives added (Peanut butter-Rawhide Express) is shown, as a treat, thus voluntarily taken and chewed, thus, providing saliva, which will dissolve all of the components normally dissolved in a food, which is to be chewed, and is digestible (Superbone).

However, no tartar control, or antimicrobial is taught. Brilliant shows oral antimicrobial compositions incorporate cationic agents, Cetylpyridinium chloride and Benzethonium chloride (col. 3, top) However, these are not bound to a carrier, in order to provide long term efficacy.

But Miskewitz so binds these antimicrobials (col 6, lines 55-60) to a chewing gum base to permit voluntarily chewing (col 3, top) as of the instant invention. Miskewitz neglect to use a proteinaceous carrier. Masterman (see above) doesn't- it's shown as equivalent to the Miskewitz carriers (col 3, lines 25-48). However, Brilliant, Miskewitz and Masterman, while presenting

Art Unit: 1617

oral compositions for animal use, do not focus on the same animal as of the instant invention. Here, a preferred chewable is not chewing gum, but, rather a bone, or rawhide, or meat-containing biscuit. Boyer provides this coated with Bromchlorophene or fluorine, as antimicrobial (col 1, lines 45-59).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a treat for a specific species, to use Superbone or Rawhide Express Pordogs, modified with antimicrobials to provide acceptable application dental health, and odor reduction. Secondary references teach one having ordinary skill in the art would be motivated to perform this modified in order to enhance antimicrobial efficacy.

There has been no showing of criticality of treatment or unexpected results of any specific application or efficacy of the components. Thus, the artisan would find it obvious to prepare particular ingredient combinations, concentrations and ratios ingredients, depending upon the nutritional status, dietary content and form desired.

The selection of each ingredient is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on T-F from 7AM to 5:30PM.

Art Unit: 1617

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, acting, can be reached on (703) 308-4620. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/sg

May 30, 2000

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is stylized with a large "N" and a cursive "L".

NEIL S. LEVY
PRIMARY EXAMINER